

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

| |
|---|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|---|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ALBERTO GONZALEZ
GUZMAN,

Defendant and Appellant.

2d Crim. No. B290575
(Super. Ct. No. 17CR08905)
(Santa Barbara County)

Jose Alberto Gonzalez Guzman appeals from the judgment after a jury convicted him of two counts of aggravated sodomy of a child (Pen. Code,¹ § 269, subd. (a)(3)), one count of lewd acts on a child (§ 288, subd. (c)(1)), and five counts of contempt of court (§ 166, subd. (c)(1)(A)). The trial court sentenced him to 30 years to life in state prison. Guzman contends his aggravated sodomy and lewd acts convictions should be reversed because the trial court erroneously admitted expert

¹ All further statutory references are to the Penal Code.

testimony on child sexual abuse accommodation syndrome (CSAAS). We affirm.

FACTUAL AND PROCEDURAL HISTORY

Guzman's sexual abuse

Jane Doe is the oldest of Guzman and M.L.'s four children. She was born in 2000. For several years after Doe's birth, M.L. worked nights, leaving the children at home in Guzman's care. When M.L. switched to a daytime shift, Doe and her siblings would be home with Guzman from around 3:30 to 5:00 p.m.

Guzman began sexually molesting Doe when she was about 10 years old. Doe woke up early one morning and got into bed with Guzman to watch television. Her siblings were asleep, and M.L. was at work. As they lay there, Guzman took Doe's hand and made her touch his penis as he touched her vaginal area over her clothes. He later told her that the touching was a secret, that she should not tell her mother, and that it would not happen again.

Over the next five years, Guzman regularly forced Doe to touch his penis. He would touch her "private areas" over her clothes at the same time. Doe did not understand what Guzman was forcing her to do. She thought it "weird" that he told her to keep it secret.

Guzman's abuse grew more serious over time. He began to force Doe to orally copulate him about twice per week. He orally copulated her. He sodomized her about once each week. Doe occasionally bled after Guzman sodomized her.

Whenever Doe refused Guzman's abuse, he would grow angry and take it out on her younger siblings. He would also take away her cell phone or refuse to let her see her friends.

This made Doe feel like she did not have a choice when Guzman told her what to do.

In junior high school, Doe realized what Guzman was doing was “really wrong.” When she began to menstruate, she used it as an excuse to dissuade Guzman from abusing her. She avoided her home, especially if she would be alone with her father. Doe felt sad, overwhelmed, and helpless. Though she did not want to engage in sexual acts with Guzman, she did not want him to take out his anger on her younger siblings. She did not feel she could tell M.L. because she did not want to be the reason her parents separated.

Doe started to cut her arms when she was in sixth grade. As Guzman’s abuse escalated, Doe cut herself more often to assuage her feelings of anger and guilt. She continued to cut herself until 2017, when she began therapy.

Doe’s disclosure

In July 2016, M.L. walked into the room while Guzman and Doe were arguing. Doe said to Guzman, “Why don’t you just tell [M]om everything you’ve done to me?” Guzman told M.L. not to listen to Doe, and told Doe not to tell M.L. anything. M.L. pushed Guzman out of the room and closed the door. Doe told her mother that Guzman had been sexually abusing her for the past five years.

M.L. told Guzman to take his things and leave the house. Guzman “admitted that he did touch [Doe] but [said] that he didn’t abuse her.” M.L. reported the abuse to police.

Doe told a detective that her father had sexually abused her. She estimated that Guzman sodomized her about 10 times and orally copulated her more than 10 times. She said that she never bled from the sodomy, and that the first time Guzman

forced her to touch his penis was over the clothes. Doe later said that she initially minimized her father's abuse to the detective because she was nervous, confused, embarrassed, and frustrated. That conversation also marked the first time she recounted the details of the abuse.

Events after Doe's disclosure

M.L. made a pretext phone call to Guzman as part of the police's investigation. M.L. told Guzman she needed to hear what he had done. Guzman responded, "Why do you want me to tell you, if [Doe] already told you? [¶] . . . [¶] Why hurt you more?" He said he "didn't do anything by force," but then called himself a "fucking animal." He refused to discuss the details of the abuse. He said that it was "not easy to deal with what I did."

M.L. made another pretext call to Guzman the following month. M.L. told Guzman that he could not send text messages to their children until he told her what he did to Doe. He said they should talk about it in person.

Police arrested Guzman in September 2016. Afterward, Doe felt guilty that her brothers no longer had a father figure in their lives. She felt like M.L.'s ensuing financial problems were her fault. She attempted suicide.

A victim's advocate worked with Doe after Guzman's arrest. Doe asked the advocate about obtaining a U-visa.² The advocate certified that Doe and her mother were victims of a crime and that they had assisted law enforcement. The advocate explained that the certification did not guarantee that Doe and

² A U-visa permits an undocumented immigrant who is a victim of a crime and who assists law enforcement in the investigation or prosecution of that crime to remain temporarily in the United States. (See 8 C.F.R. § 214.14 (2019).)

her mother would obtain visas. She also explained that Guzman could use Doe's visa request to attack her credibility at trial.

CSAAS evidence

At trial, the prosecutor moved to permit Dr. Anthony Urquiza to testify on CSAAS. The prosecutor claimed Dr. Urquiza's testimony was relevant because it would help to dispel common misconceptions about sexual abuse victims, explain the untimeliness of Doe's disclosure, and explain her reasons for the delay. Dr. Urquiza would not testify whether Doe was actually abused.

Guzman objected to the request. Relying on scholarly articles from 2005 and 2012, Guzman argued CSAAS "is a vague subject unsupported in behavior science and not generally accepted within the scientific community." He also argued the prosecutor had not shown that jurors held the misconceptions she sought to dispel.

The trial court rejected Guzman's arguments because he put Doe's credibility at issue. In his opening statement, Guzman said Doe fabricated her allegations because she was mad at him for disciplining her. He said she continued to lie about his abuse because she wanted to obtain a U-visa. Dr. Urquiza could therefore testify to provide context for Doe's behavior.

Prior to Dr. Urquiza's testimony, the trial court instructed the jury pursuant to CALJIC No. 10.64:

Evidence will be submitted concerning child [sexual] abuse accommodation syndrome This evidence is not received and must not be considered by you as proof that [Doe's] claims are true. Child abuse accommodation . . . syndrome research is based upon

an approach that is completely different from that which you as jurors must take in this case. The syndrome research begins with the assumption that a molestation has occurred[,] and seeks to describe and explain common reactions of children . . . to that experience.

As distinguished from that research approach[,] you are to presume [Guzman] is innocent. The People have the burden of proving guilt beyond a reasonable doubt. You should consider the evidence concerning the syndrome and its [e]ffect only for the limited purpose of showing, if it does, that [Doe's] reactions as demonstrated by the evidence are not inconsistent with her having been molested.

Dr. Urquiza testified that he was not familiar with the facts of this case, had not met Doe, and had formed no opinion whether Guzman had abused her. He explained that CSAAS is a means of describing the various responses children may have to sexual abuse. It is not a diagnostic tool to determine whether a child has been abused, but rather begins with the premise that a child was abused. If a child has not been sexually abused, CSAAS is irrelevant.

CSAAS has five components: (1) secrecy, (2) helplessness, (3) entrapment and accommodation, (4) delayed and unconvincing disclosure, and (5) retraction or recantation. Disclosure often occurs when there is a trigger, such as a change in the relationship between the victim and abuser. Triggers are victim specific and unpredictable. Children who disclose earlier

are generally able to provide more information all at once, while those who disclose later tend to provide information over time. A closer relationship between the victim and abuser generally results in a longer period of secrecy.

A victim's feeling of helplessness can manifest itself in self-harm. Sexually abused children are more likely to cut themselves than non-victims. Self-harm alone does not demonstrate that a child has been abused.

DISCUSSION

Guzman contends his aggravated sodomy and lewd acts convictions should be reversed because the trial court erred when it admitted "inherently unreliable" CSAAS evidence. We disagree.

Expert testimony on CSAAS is inadmissible to prove that a child has been sexually abused. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300 (*McAlpin*).) But it is admissible to rehabilitate the child's credibility where the defendant suggests that their conduct is inconsistent with their claims of abuse. (*Ibid.*) "Such expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior." (*Id.* at p. 1301.) We review the admission of CSAAS testimony for abuse of discretion. (*People v. Brown* (2014) 59 Cal.4th 86, 101.)

There was no abuse of discretion here. Dr. Uquiza explicitly stated that he was not familiar with the facts of the case, had not met Doe, and had no opinion whether she had been abused. He instead explained why a victim may keep abuse secret for several years. He also explained why a victim may engage in self-harm. Because Guzman attacked Doe's credibility,

Dr. Urquiza’s testimony was properly admitted. (*McAlpin*, *supra*, 53 Cal.3d at p. 1301; see also *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744-1745 [CSAAS evidence admissible if “the victim’s credibility is placed in issue due to the paradoxical behavior, including a delay in reporting a molestation”].)

Guzman recognizes that we are bound by *McAlpin* and its progeny (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), but nevertheless contends we should register our disapproval of CSAAS evidence (see *People v. Superior Court (Alexander)* (1995) 31 Cal.App.4th 1119, 1128-1129, fn. 8 [“it is appropriate for an intermediate Court of Appeal to record its disagreement with existing law when the matter involves an area of public importance”]). To support his contention, Guzman relies on out-of-state cases that have either severely restricted the use of CSAAS evidence (see *Hadden v. State* (Fla. 1997) 690 So.2d 573; *State v. J.L.G.* (N.J. 2018) 190 A.3d 442; *Commonwealth v. Dunkle* (Pa. 1992) 602 A.2d 830) or banned it altogether (see *Sanderson v. Commonwealth* (Ky. 2009) 291 S.W.3d 610; *Newkirk v. Commonwealth* (Ky. 1996) 937 S.W.2d 690; *State v. Ballard* (Tenn. 1993) 855 S.W.2d 557). “Obviously, we are not bound by these sister-state cases.” (*People v. Ross* (2008) 162 Cal.App.4th 1184, 1190.) And we will not follow them if doing so is “contrary to good policy. [Citations.]’ [Citation.]” (*Ibid.*)

Like other California courts, we believe CSAAS evidence is important to disabuse jurors of misconceptions they may hold about a victim’s reactions to sexual abuse. (See, e.g., *People v. Brown* (2004) 33 Cal.4th 892, 906; *People v. Gonzales* (2017) 16 Cal.App.5th 494, 503; *People v. Mateo* (2016) 243 Cal.App.4th 1063, 1069; *People v. Perez* (2010) 182 Cal.App.4th 231, 244-245.) And we are not alone: The courts of at least 40

other states admit such evidence for similar or even broader purposes. (See *King v. Commonwealth* (Ky. 2015) 472 S.W.3d 523, 534-535 (dis. opn. of Abramson, J.) [compiling cases].) It would be contrary to good policy to adopt the views on CSAAS evidence expressed in the cases Guzman cites. We therefore decline to do so.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Raimundo Montes de Oca, Judge
Superior Court County of Santa Barbara

Vanessa Place, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven D. Matthews and Roberta L. Davis,
Deputy Attorneys General, for Plaintiff and Respondent.